

Leslie A. Cartier Revocable Trust

v.

City of Laconia

Docket No.: 25748-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$790,900 (land \$280,200; building \$510,700) on Map 125/Lot 478/5.72, 211 Soleil Mountain, a single-family home on 0.30 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Leslie Cartier and Diane Cartier, argued the assessment was excessive because:

(1) the Property is located in the Meredith Bay Community and the Taxpayer does not

understand why the development is coded a “90” neighborhood and has higher land values than other neighborhoods;

(2) on a per square foot basis, the land is assessed for \$21.44, but other, larger lots in the same development are generally assessed for less per square foot (see Taxpayer Exhibit No. 1);

(3) the Property is on a small lot with a shared driveway; and

(4) the assessment should be abated to \$582,182 as stated in the appeal document.

The City argued the assessment was proper because:

(1) the City performed a revaluation in tax year 2010;

(2) a neighboring property in the same community (197 Soleil Mountain) sold in November, 2009 for \$815,000 (see Municipality Exhibit A);

(3) the City made an adjustment to the land value for the shared driveway; and

(4) the appeal should be denied.

The parties agreed the level of assessment in the City for tax year 2010 was 98%, the median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer did not carry its burden of proving disproportionality and the appeal is therefore denied.

Assessments must be based on market value, as prescribed in RSA 75:1¹. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town.

See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To prevail in this appeal, the Taxpayer had the burden of establishing the market value of the Property was below the

¹ “The selectmen shall appraise... all other taxable property at its market value. Market value means the property’s full and true value as the same would be appraised in payment of a just debt due from a solvent debtor.”

equalized value reflected in the abated assessment. (\$790,900 assessment divided by 98% level of assessment = \$807,000, rounded, indicated market value as of April 1, 2010 assessment date.)

The Taxpayer complained about the high amount of taxes it must pay. The amount of property taxes paid by a taxpayer is determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. (See International Association of Assessing Officers, Property Assessment Valuation, pp. 4-6 (1977).) The board's jurisdiction is limited to the first factor, *i.e.*, the board decides if the Property was overassessed, resulting in the taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, *i.e.*, the municipality's budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); *see also* Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

The Taxpayer indicated the Meredith Bay Community is private and the property owners do not benefit from many City services. However, the lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value, and any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992).

The Taxpayer did not present any credible evidence of the Property's market value. To carry its burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, *e.g.*, Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of

Sunapee, 126 N.H. 214, 217-18 (1985). At the hearing, the Taxpayer indicated it had a “market analysis” completed “in 2012” which arrived at a market value estimate of “around \$800,000,” which is generally supportive of the assessed value adjusted by the level of assessment (\$807,000), but did not present this analysis.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The Taxpayer testified it was concerned the assessed value changed “every year, based on the sales that occurred during that year.” However, the City must annually and in accordance with state assessing guidelines, review its assessments and adjust those that have declined or increased more in value than values generally changed in the City. RSA 75:8. See also RSA 73:1, RSA 73:10, RSA 74:1 and RSA 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. at 799, a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In annually arriving at an assessment, the City must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. at 67-68.

The board finds the sale of a neighboring property (197 Soleil Mountain) the best indication of the Property’s market value and is supportive of the assessed value. It sold in

November, 2009 for \$815,000, five months before the April 1, 2010 date of assessment. It is located “two lots” from the Property, is of a similar style, quality and condition and, although it has slightly better views of Lake Winnepesaukee, it is somewhat smaller than the Property. (See Municipality Exhibit A.)

For all of these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Leslie A. Cartier Revocable Trust v. City of Laconia

Docket No.: 25748-10PT

Page 6 of 6

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Leslie and Diane Cartier, 211 Soleil Mountain, Laconia, NH 03246, representatives for the Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: February 4, 2013

Anne M. Stelmach, Clerk